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*Counsel for Official Committee of Tort Claimants*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

Bankruptcy Case  
No. 19-30088 (DM)

**PG&E CORPORATION**

Chapter 11  
(Lead Case)  
(Jointly Administered)

**-and-**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**MOTION OF THE OFFICIAL  
COMMITTEE OF TORT CLAIMANTS  
FOR ENTRY OF A PROTECTIVE  
ORDER**

**Debtors.**

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

Date: June 26, 2019  
Time: 9:30 a.m. (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102

*\*All papers shall be filed in the Lead Case,  
No. 19-30088 (DM)*

**Objection Deadline:** June 19, 2019,  
4:00 p.m. (Pacific Time)

1 The Official Committee of Tort Claimants (the “TCC”) in the above-captioned chapter 11  
2 cases (the “**Chapter 11 Cases**”) of PG&E Corporation and Pacific Gas and Electric Company  
3 (collectively the “**Debtors**”) hereby submits this motion for entry of a protective order governing  
4 the production, review, disclosure, and handling of discovery materials produced by the parties in  
5 the Chapter 11 Cases (the “**Motion**”). In support of this Motion, the TCC submits the Declaration  
6 of Lars Fuller (the “**Fuller Declaration**”) filed contemporaneously herewith. A proposed form of  
7 order granting the relief requested is attached hereto as **Exhibit A** (the “**Proposed Protective**  
8 **Order**”).

9 **I. INTRODUCTION**

10 This discovery dispute arises out of the Debtors’ two-month refusal to give the TCC access  
11 to the documents the Debtors have already produced to the fire victims in the California state court  
12 North Bay fire litigation. After two months of arguing over the matter, the Debtors have agreed to  
13 provide the TCC with access to the already-produced documents, that are already in the database,  
14 provided the TCC agrees to a protective order over certain allegedly “confidential” documents that  
15 are in that database. The Debtors insist on a protective order that places the burden of whether or  
16 not the documents are confidential on the receiving party, in this case the TCC. This idea flies in  
17 the face of the Northern District standard protective order, and every other protective order entered  
18 in the state, which places the burden on proving confidentiality on the party placing the restriction  
19 of confidentiality on the documents. After two months of attempting to get access to documents  
20 the Debtors have already placed in a database for use in litigation, the TCC is now forced to bring  
21 this dispute to the Court for resolution.

22 The parties have agreed substantially on a stipulated proposed protective order to govern  
23 the production and exchange of discovery in these jointly administered chapter 11 cases. However,  
24 the Debtors have been unwilling to agree to standard, boilerplate language within this District and  
25 this Court regarding the provision for “judicial intervention,” *i.e.*, which party shall bear the burden  
26 of filing a motion to resolve a dispute regarding the designation of materials as confidential. The  
27 U.S. District Court’s model protective order for the Northern District of California, as well as prior  
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1 approved protective orders in other cases by the Court, place the burden of filing a motion, and the  
2 burden of persuasion regarding the asserted protection, upon the “Designating Party,” *i.e.*, the party  
3 that seeks to designate the information as confidential. The Debtors have been unwilling to consent  
4 to this standard language. Instead, the Debtors wish to place the burden of filing a motion and  
5 removing the designation as confidential, and the attendant protective restrictions, upon the  
6 “Challenging Party,” *i.e.*, the party that disputes the designation.

7 The TCC has conferred with the Debtors and with counsel for the Unsecured Creditors’  
8 Committee regarding the Proposed Protective Order attached hereto as **Exhibit A**. The Debtors  
9 have indicated that they remain opposed to the “judicial intervention” procedure set forth in the  
10 TCC’s Proposed Protective Order. The Debtors have also indicated that the UCC supports a  
11 protective order that utilizes the judicial intervention procedure proposed by the Debtors.

12 The Debtors have refused to produce relevant discovery in the Cases absent a protective  
13 order. Consequently, the TCC files this Motion to obtain the Court’s resolution of the disputed  
14 proposed language and to enable the parties to proceed with urgent discovery and document  
15 production with appropriate protective parameters.

## 16 **II. PROPOSED PROTECTIVE ORDER STRUCTURE**

17 The Proposed Protective Order seeks to govern the production, review, disclosure, and  
18 handling of “**Discovery Material**,” which is broadly defined to include all information produced  
19 in disclosures, responses to discovery requests, or provided to the Debtors’ retained advisors and  
20 consultants. **Exhibit A**, at Sections 1; 2.4. The Proposed Protective Order provides that the  
21 “**Producing Party**,” *i.e.*, the party producing the Discovery Materials, may designate the produced  
22 information as confidential. *Id.*, at Section 5. The Proposed Protective Order provides four distinct  
23 categories of confidentiality. *Id.* at Sections 5.1–5.4. Once a party receives Discovery Material  
24 marked as confidential under any of these four categories, the Proposed Protective Order provides  
25 significant restrictions and obligations on the access and use of the confidential information. *Id.* at  
26 Section 7. Based on these restrictions and obligations, it is far easier and less expensive on the  
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1 Receiving Party to receive, manage, and utilize Discovery Materials that has not been marked as  
2 confidential.

3 The Proposed Protective Order provides that a Producing Party may only designate  
4 Discovery Materials as confidential in “good faith.” *Id.* at Sections 5.2–5.3. This limitation  
5 regarding whether the Producing Party has properly designated material as confidential in good  
6 faith is susceptible to disagreement between the parties, particularly given the substantial burden  
7 that is placed upon the Receiving Party upon receipt of Discovery Materials designated as  
8 confidential. Consequently, the Proposed Protective Order includes a balanced, progressive  
9 procedure for resolution of these disputes, requiring conferral, explanation for the designation, and  
10 written challenge. *Id.* at Section 6. To the extent the parties cannot reach agreement on the  
11 designation, the process provides for “Judicial Intervention,” so that the Court may resolve the  
12 disagreement. *Id.* at Section 6.3. The TCC proposes that the burden of bringing the motion to  
13 resolve the conflict (the “**Resolution Motion**”) should fall on the Designating Party, *i.e.*, the party  
14 claiming the confidential designation. The Debtors have refused to agree to such a procedure, and  
15 instead want the party seeking the Discovery Materials, *i.e.*, the Challenging Party, as unprotected  
16 to bear the burden of requesting the Court’s resolution.

### 17 **III. THE COURT’S FORM PROTECTIVE ORDER**

18 The U.S. District Court for the Northern District of California provides a model “Stipulated  
19 Protective Order for Standard Litigation.” *See* Fuller Declaration, Ex. 1 (the “**Model Order**”). The  
20 TCC used the Model Order to draft the Proposed Protective Order. The TCC drafted the “Judicial  
21 Intervention” provision of the Proposed Protective Order to mirror the procedure in the Model  
22 Order. *Id.* The Model Order’s “Judicial Intervention” procedure requires the Designating Party to  
23 initiate the Resolution Motion. *Id.* at Section 6.3. The Model Order also provides that the “burden  
24 of persuasion in any such challenge proceeding shall be on the Designating Party.” *Id.* The TCC  
25 Proposed Protective Order proposes these same procedures. Notwithstanding the similarity to the  
26 procedure in the Model Order, the Debtors have refused to agree to the Judicial Intervention  
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1 procedure proposed in the Proposed Protective Order. Instead, the Debtors want the burden of  
2 initiating the Resolution Motion, and the burden of persuasion, to be on the Receiving Party.

3 **IV. THE COURT'S PRIOR PROTECTIVE ORDERS**

4 The TCC's Proposed Protective Order utilizes the same Resolution Motion procedure as  
5 previously approved by this Court in *In re Yellow Cab Cooperative, Inc.* See Fuller Declaration,  
6 Ex. 2, at Section 6.3 (the "**Yellow Cab Protective Order**"). **Exhibit C.** The procedure requires  
7 the Designating Party, not the Requesting Party, to initiate the Resolution Motion. It also requires  
8 the Designating Party to bear the burden of persuasion that the disputed material should be kept  
9 confidential. The TCC's proposed Judicial Intervention procedure mirrors the Court's prior  
10 approved protective order in the Yellow Cab Protective Order.

11 **V. ARGUMENT**

12 The Proposed Protective Order best places the burden of filing the Resolution Motion upon  
13 the party asserting the need for protection. Following this procedure is logical, given that it is the  
14 Designating Party that is provided the first opportunity to designate the Discovery Material as  
15 confidential, restricted only by the amorphous concept of "good faith." Designation as confidential  
16 places significant burdens upon the Receiving Party to maintain, preserve, and utilize confidential  
17 Discovery Material. Placing the burden upon the Receiving Party to remove such restrictions  
18 would allow the Designating Party to abuse the designation as confidential without consequence.  
19 Placing the burden on the Designating Party, rather than the Receiving Party, is the logical way to  
20 enforce the Designating Party's good faith, and appropriate use of discretion. To the extent the  
21 Designating Party knows it will bear the burden of requesting Judicial Intervention, as well as the  
22 burden of persuasion, in keeping a confidential designation for Discovery Materials, it will facilitate  
23 keeping the Designating Party honest in utilizing confidential designations only where it is  
24 objectively appropriate. Otherwise, the Designating Party will be able to use designations of  
25 confidentiality to shift burdens, expense, and significant restrictions upon the Receiving Party for  
26 materials that should not be designated as confidential.

1 **VI. CONCLUSION**

2 The TCC requests that the Court enter the attached Proposed Protective Order, which  
3 complies with the Model Order, as well as the Court's prior approved protective orders, regarding  
4 the process for judicial intervention to resolve disputes. In the event the parties are unable to resolve  
5 a dispute regarding whether a particular confidential designation is appropriate, the Designating  
6 Party should bear the burden of seeking the Court's intervention, as well as the burden of persuasion  
7 in demonstrating that the Discovery Materials should be kept confidential. The procedure the  
8 Debtors seek to impose is contrary to the established practices of this District and this Court. It  
9 also gives the Designating Party excessive motivation to designate materials as confidential, while  
10 placing the burden of removing bad faith and unfounded designations on the Receiving Party who  
11 should be entitled to receive them without such designation.

12 **VII. NOTICE**

13 Notice of the Motion will be provided to (i) the Debtors, c/o PG&E Corporation and Pacific  
14 Gas and Electric Company, PO Box 770000, 77 Beale Street, San Francisco, CA 94105 (Attn: Janet  
15 Loduca, Esq.); (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153  
16 (Attn: Stephen Karotkin, Esq., Jessica Liou, Esq., and Matthew Goren, Esq.), proposed attorneys  
17 for the Debtors; (iii) Keller & Benvenuti LLP, 650 California Street, Suite 1900, San Francisco,  
18 CA 94108 (Attn: Tobias Keller, Esq. and Jane Kim, Esq.), attorneys for the Debtors; (iv) Stroock  
19 & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038-4982 (Attn: Kristopher M.  
20 Hansen, Esq., Erez E. Gilad, Esq., and Matthew G. Garofalo, Esq.) and 2029 Century Park East,  
21 Los Angeles, CA 90067-3086 (Attn: Frank A. Merola, Esq.), as counsel for the administrative agent  
22 under the Debtors' debtor-in-possession financing facility; (v) Davis Polk & Wardwell LLP, 450  
23 Lexington Avenue, New York, NY 10017 (Attn: Eli J. Vonnegut, Esq., David Schiff, Esq., and  
24 Timothy Graulich, Esq.), as counsel for the collateral agent under the Debtors' debtor-in-possession  
25 financing facility; (vi) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the  
26 Americas, New York, NY 10019-6064 (Attn: Alan W. Kornberg, Esq., Brian S. Hermann, Esq.,  
27 Walter R. Rieman, Esq., Sean A. Mitchell, Esq., and Neal P. Donnelly, Esq.), as counsel to the  
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1 California Public Utilities Commission; (vii) the Office of the United States Trustee for Region 17,  
2 450 Golden Gate Avenue, 5th Floor, Suite #05-0153, San Francisco, CA 94102 (Attn: James L.  
3 Snyder, Esq. and Timothy Laffredi, Esq.); (viii) the U.S. Nuclear Regulatory Commission,  
4 Washington, DC 20555-0001 (Attn: General Counsel); (ix) the U.S. Department of Justice, 1100 L  
5 Street, NW, Room 7106, Washington DC 20005 (Attn: Danielle A. Pham, Esq.,) as counsel for the  
6 United States on behalf of the Federal Energy Regulatory Commission; (x) Milbank LLP, 55  
7 Hudson Yards, New York, NY 10001-2163 (Attn: Dennis F. Dunne, Esq. and Sam A. Khalil, Esq.)  
8 and 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Paul S. Aronzon, Esq.,  
9 Gregory A. Bray, Esq., and Thomas R. Kreller, Esq.), as counsel for the Official Committee of  
10 Unsecured Creditors; and (xi) those persons who have formally appeared in these Chapter 11 Cases  
11 and requested service pursuant to Bankruptcy Rule 2002. The TCC respectfully submits that no  
12 further notice is required.

13 No previous request for the relief sought herein has been made by the TCC to this or any  
14 other court.

15 **WHEREFORE**, the TCC respectfully requests entry of the Proposed Protective Order,  
16 attached hereto as Exhibit A.

17  
18 Dated June 5, 2019

Respectfully Submitted,

BAKER & HOSTETLER LLP

20 By: /s/ Robert Julian

21 *Counsel for The Official Committee of Tort*  
22 *Claimants*